

# **INDIANA PUBLIC DEFENDER COMMISSION**

## **Third Quarter 2005 Meeting Minutes**

December 15, 2005

The meeting was called to order at 3:10 p.m. by Chairman Norman Lefstein. Commission members attending were: Ms. Susan Carpenter, Mr. Les Duvall, Ms. Monica Foster, Ms. Bettye Lou Jerrell, and Ms. Rebecca McClure. Also attending was Michael Murphy, Staff Counsel for the Commission, and Deborah Guthrie-Jones, recording secretary. Deborah Neal, an applicant for the vacant position of assistant staff counsel also attended. Members not attending were: The Hon. Daniel F. Donahue, Sen. Timothy Lanane, Sen. Joseph C. Zakas, Rep. Ralph M. Foley, and Rep. Bob Kuzman.

1. Chairman Norman Lefstein started the meeting by introducing Deborah Neal, candidate for the assistant staff counsel to the Commission. Ms. Neal had been interviewed by the designated subcommittee, and interviewed by the Executive Director of State Court Administration Ms. Lilia Judson, who recommended Ms. Neal to Indiana Chief Justice Randall T. Shepard for the open position. If approved, the Commission staff will be in the best position that it has ever been.
2. The minutes from the September 15, 2005 meeting were reviewed and approved as submitted. Ms. Bettye Lou Jerrell made the motion for the approval of the minutes. Susan Carpenter seconded the motion and the motion carried.
3. The Commission then discussed the recently adopted guideline outlining the penalty for late requests for reimbursement in non-capital cases. Chairman Lefstein pointed out that ambiguity exists in the language of the guideline. In particular, the word "claim" has no clear definition, and that the Commission may want to amend the recent guideline to address the issue.
4. Next, the Chairman Lefstein introduced the issue involving Marion County's failure to provide a request for reimbursement prior to the 65-day deadline. A letter written by David Cook, Chief Public Defender of the Marion County Public Defender Agency was discussed. After lengthy discussion of the impact and consequences of total denial of the request as appropriate under the guideline, and the circumstances outlined in the letter, the Commission determined the appropriate course of action would be to consider the language of the guideline, which states: "*(u)pon written request demonstrating good cause, the Commission will consider setting aside the denial of a late claim*", as applicable in this situation. However, the good cause determination would be held in abeyance until proof of caseload compliance is demonstrated, and the required forms are submitted. A letter will be written to Mr. Cook advising, that given the nature of this apparently exceptional situation, this consideration would be offered only once. As a further result of this discussion, the Commission determined that the necessary language defining a "claim" will be added to the recently adopted guideline as follows:

## *12-15-05 Amended Guideline*

*To be eligible for maximum reimbursement, claims in non-capital cases must be received by the Commission not later than forty-five (45) days after the end of the calendar quarter in which they were incurred. Claims received 1 to 10 days later than 45 days after the end of the calendar quarter will be penalized 10% of the maximum eligible reimbursement. Claims received 11 to 20 days later than 45 days after the end of the calendar quarter will be penalized 25% of the maximum eligible reimbursement. The Commission will deny all late claims received more than 65 days after the end of the calendar quarter. A "claim" as used in this guideline includes all requested financial information relating to defense expenditures, caseload information in proper spreadsheet format, attorney qualifications and verifications. Upon written request demonstrating good cause, the Commission will consider setting aside the denial of a late claim. Whether a county's quarterly claim is timely, late or denied, caseload data must be submitted for public defender offices, contract attorneys and assigned counsel.*

Motion was made by Ms. McClure, seconded by Ms. Carpenter and it carried.

5. The Commission next discussed the Marion County Criminal Modest Means Program, and the potential conflict with Standard C of the Standards for Indigent Defense Services in Non-Capital Cases. Failure to comply with the Commission Standards could jeopardize approximately \$2 million of annual reimbursement that Marion County receives from the Public Defender Commission. More information is required and the issue was tabled until the April meeting.
6. Michael Murphy discussed the Staff activities contained in the Staff Report.
7. Ms. Rebecca McClure announced that this would be her last meeting with the Commission. She has been appointed by the Governor to the position of Boone Superior Court Judge. She will begin in that capacity January 1, 2006. The Commission members congratulated her on her accomplishment and reminisced about old times as a Commission member.
8. The Commission discussed the requested Misdemeanor caseload information and apparent lack of data. While some counties seem reticent to provide the information, others indicate they do not handle misdemeanors. Consensus was that continued effort to gather information is appropriate to ascertain the conditions in the counties.
9. Discussion of the financial balance of the Public Defense Fund resulted in the decision to delay reimbursement of the 3<sup>rd</sup> Quarter requests until after January 1, 2006, thereby allowing full reimbursement of eligible amounts.
10. The Commission next discussed the necessity to repeal an earlier guideline to Standard G,

which stated:

*(i)f the Chief Public Defender is not paid in compliance with guidelines, the Commission will not reimburse a county for any portion of the Chief Public Defender's salary; however, the Commission will not reject the county's entire claim.*

Due to the recently-passed Judicial Salary Increase legislation, which included Prosecutor salaries, the Commission determined that this guideline was in direct conflict with the requirement that Chief Public Defender Salaries be "substantially comparable" to Prosecutor salaries. Ms. Foster made the motion. Ms. Carpenter seconded the motion and the motion carried. (Ms. McClure cast her "in favor of" vote via telephone to Mr. Murphy at 3:45 pm on 12-16-05).

11. The Commission discussed a letter from Vanderburgh County concerning use of supplemental fund moneys. Ms. Jerrell is aware of the situation, would look into it and report to the Commission in April, if necessary.

12. The Commission addressed claims for 50% reimbursement in capital cases as follows:

Recommendations for Reimbursements in Capital Cases			
12/15/05			
COUNTY	DEFENDANT	CASE CHRONOLOGY	TOTAL
Clark	Melcher		\$4,112.00
Lake	Aki-Khuam(Williams)	X	\$12,783.49
	Britt	X	\$10,539.27
	Jeter	X	\$6,812.05
	Maust	X	\$6,691.97
	Roche	X	\$4,422.15
Madison	Baer		\$20,295.49
Marion	Adams	X	\$2,142.65
	Bomani (Davis)	X	\$978.75
	Holland	X	\$13,406.54
	Holland #2	X	\$7,024.50

	Voss	X	\$6,463.50
Morgan	Pruitt	X	\$10,182.52
Spencer	Ward		\$1,646.98
Vanderburgh	McManus	X	\$540.00
<b>TOTAL</b>			<b>\$108,041.86</b>

Ms. Jerrell made the motion for the approval of the submitted 50% reimbursement in capital cases. Ms Carpenter seconded the motion, and the motion carried(Ms. McClure cast her “in favor of” vote by telephone to Mr. Murphy at 3:45 pm on 12-16-05).

13. The Commission addressed claims for 40% reimbursement in non-capital cases as follows:

Recommendations for Reimbursements in Non-Capital Cases						
			12/15/05			
County	Penalty Factor	Period Covered	Total Expenditure	Adjustment	Eligible Expenditure	Reimbursement
ADAMS	0.00	7/1/05 - 9/30/05	\$56,944.29	\$8,481.06	\$48,463.23	\$19,385.29
ALLEN	0.00	7/1/05 - 9/30/05	\$686,653.86	\$0.00	\$686,653.86	\$274,661.54
BENTON	1.00	7/1/05 - 9/30/05	\$10,143.76	\$0.00	\$10,143.76	\$0.00
BLACKFORD	1.00	7/1/05 - 9/30/05	\$29,329.60	\$0.00	\$29,329.60	\$0.00
CARROLL	1.00	7/1/05 - 9/30/05	\$31,965.06	\$0.00	\$31,965.06	\$0.00
CLARK	0.00	7/1/05 - 9/30/05	\$101,114.64	\$0.00	\$101,114.64	\$40,445.86
DECATUR	1.00	7/1/05 - 9/30/05	\$27,985.80	\$0.00	\$27,985.80	\$0.00
FAYETTE	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
FLOYD	0.00	7/1/05 - 9/30/05	\$150,341.30	\$0.00	\$150,341.30	\$60,136.52
FOUNTAIN 2Q05	1.00	4/1/05 - 6/30/05	\$21,402.94	\$0.00	\$21,402.94	\$0.00
FOUNTAIN 3Q05	0.00	7/1/05 - 6/30/05	\$15,149.94	\$3,412.15	\$11,737.79	\$4,695.12
FULTON	0.00	7/1/05 - 9/30/05	\$41,013.05	\$12,089.08	\$28,923.97	\$11,569.59
GRANT	1.00	7/1/05 - 9/30/05	\$130,465.00	\$9,284.03	\$121,180.97	\$0.00
GREENE	0.00	7/1/05 - 9/30/05	\$49,632.31	\$12,732.90	\$36,899.41	\$14,759.76
HANCOCK	0.00	7/1/05 - 9/30/05	\$91,120.72	\$0.00	\$91,120.72	\$36,448.29
HENRY	0.00	7/1/05 - 9/30/05	\$97,641.21	\$21,869.04	\$75,772.17	\$30,308.87
JASPER	0.00	7/1/05 - 9/30/05	\$32,388.21	\$9,201.20	\$23,187.01	\$9,274.80
JAY	0.00	7/1/05 - 9/30/05	\$41,412.55	\$5,987.36	\$35,425.19	\$14,170.08
JENNINGS	0.00	7/1/05 - 9/30/05	\$46,382.14	\$6,548.07	\$39,834.07	\$15,933.63

KNOX	0.10	7/1/05 - 9/30/05	\$167,116.24	\$55,045.83	\$112,070.41	\$40,345.35
KOSCIUSKO**	0.00	7/1/05 - 9/30/05	\$95,708.38	\$0.00	\$95,708.38	\$38,283.35
LAKE	0.10	7/1/05 - 9/30/05	\$744,855.73	\$0.00	\$744,855.73	\$268,148.06
LAPORTE	0.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
MADISON***	0.00	7/1/05 - 9/30/05	\$398,509.77	\$120,143.10	\$278,366.67	\$111,346.67
MARION	1.00	7/1/05 - 9/30/05	\$1,790,840.57	\$0.00	\$1,790,840.57	\$0.00
MARTIN	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
MIAMI	1.00	7/1/05 - 9/30/05	\$75,987.58	\$7,950.82	\$68,036.76	\$0.00
MONROE	0.00	7/1/05 - 9/30/05	\$216,961.42	\$25,404.07	\$191,557.35	\$76,622.94
MONTGOMERY	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
NEWTON	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
NOBLE	0.00	7/1/05 - 9/30/05	\$59,919.98	\$5,656.83	\$54,263.15	\$21,705.26
OHIO	0.00	7/1/05 - 9/30/05	\$8,877.20	\$3,284.56	\$5,592.64	\$2,237.06
ORANGE	0.00	7/1/05 - 9/30/05	\$51,986.08	\$8,603.10	\$43,382.98	\$17,353.19
PARKE	0.00	7/1/05 - 9/30/05	\$18,990.33	\$0.00	\$18,990.33	\$7,596.13
PERRY	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
PIKE	1.00	7/1/05 - 9/30/05	\$56,363.40	\$0.00	\$56,363.40	\$0.00
PULASKI	1.00	7/1/05 - 9/30/05	\$24,384.09	\$12,482.33	\$11,901.76	\$0.00
RUSH	0.00	7/1/05 - 9/30/05	\$41,253.23	\$15,952.70	\$25,300.53	\$10,120.21
SCOTT	0.00	7/1/05 - 9/30/05	\$52,311.53	\$18,748.03	\$33,563.50	\$13,425.40
SHELBY	0.00	7/1/05 - 9/30/05	\$74,773.77	\$6,003.73	\$68,770.04	\$27,508.02
SPENCER	0.00	7/1/05 - 9/30/05	\$23,618.75	\$8,244.10	\$15,374.65	\$6,149.86
STEUBEN	1.00	4/1/05 - 6/30/05	\$75,018.34	\$23,121.14	\$51,897.20	\$0.00
SULLIVAN	0.00	7/1/05 - 9/30/05	\$16,593.74	\$6,331.82	\$10,261.92	\$4,104.77
SWITZERLAND	0.00	7/1/05 - 9/30/05	\$27,408.69	\$10,182.77	\$17,225.92	\$6,890.37
TIPPECANOE	0.00	7/1/05 - 9/30/05	\$278,354.56	\$111,295.70	\$167,058.86	\$66,823.54
UNION	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
VANDEBURGH	0.00	7/1/05 - 9/30/05	\$388,812.20	\$0.00	\$388,812.20	\$155,524.88
VERMILLION	0.00	7/1/05 - 9/30/05	\$22,697.51	\$5,842.01	\$16,855.50	\$6,742.20
VIGO	0.00	7/1/05 - 9/30/05	\$317,855.72	\$68,907.00	\$248,948.72	\$99,579.49
WARREN	0.00	7/1/05 - 9/30/05	\$8,718.00	\$0.00	\$8,718.00	\$3,487.20
WASHINGTON	1.00	7/1/05 - 9/30/05	\$64,299.00	\$26,275.88	\$38,023.12	\$0.00
WELLS	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
WHITE	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
WHITLEY	1.00	7/1/05 - 9/30/05	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>			<b>\$6,763,302.19</b>	<b>\$629,080.41</b>	<b>\$6,134,221.78</b>	<b>\$1,515,783.30</b>

<b>ADJUSTMENTS as of 11/22/05</b>					
Adams -- non-reimbursable misdemeanors					
<i>Benton -- no caseload spreadsheets- only vouchers</i>					
Blackford -- no standard form - no caseload spreadsheets					
Carroll -- no caseload spreadsheets - no attorney compensation					
Decatur -- no standard form - no caseload spreadsheets					
Fayette -- No submission					
Fountain 2Q05 -- more than 65 days after end of quarter					
Fountain -- non-reimbursable misdemeanors					
Fulton -- non-reimbursable misdemeanors, chins and status cases					
Grant -- no caseload spreadsheets					
Greene -- non-reimbursable misdemeanors					
Henry -- non-reimbursable misdemeanors and chins cases					
Jasper -- non-reimbursable misdemeanors					
Jay -- non-reimbursable misdemeanors					
Jennings -- non-reimbursable misdemeanors					
Knox -- <b>LATE</b> -10% non-reimbursable misdemeanors and others					
Laporte -- incomplete forms - auditor certified different amount					
Lake -- <b>LATE</b> -10%					
Madison -- non-reimbursable misdemeanors and status cases					
Marion -- <b>LATE</b> -100%-no caseload spreadsheets, except juvenile					
Martin -- No submission					
Miami -- continued non-compliance - No Chief PD					
Monroe -- non-reimbursable misdemeanors and chins cases					
Montgomery -- No total expenditure or requested amount					
Newton -- No submission					
Noble -- non-reimbursable misdemeanors					
Ohio -- non-reimbursable misdemeanors					
Orange -- non-reimbursable misdemeanors					
Perry -- No submission					
Pike -- no standard forms - no caseload spreadsheets					
Pulaski -- incomplete, separate forms - missing caseload data					
Rush -- non-reimbursable misdemeanors and chins cases					
Scott -- non-reimbursable misdemeanors, chins and status cases					
Shelby -- non-reimbursable misdemeanors and chins cases					
Spencer -- non-reimbursable misdemeanors and others					
Steuben -- no standard forms - no caseload spreadsheets					
Sullivan -- non-reimbursable misdemeanors					
Switzerland -- non-reimbursable misdemeanors, chins and others					
Tippecanoe -- non-reimbursable misdemeanors and others					
Union -- No submission					

Vermillion -- non-reimbursable misdemeanors and others					
Vigo -- non-reimbursable misdemeanors and others					
Warren -- LATE 10% - caseload data based on vouchers, not cases					
Washington -- no standard forms					
Wells -- No submission					
White -- No submission					
Whitley -- No submission					
<b>NOTES</b>					
** 85 cases, \$95,000 (3rd quarter) vs. 103 cases, \$72,000 (2nd quarter)!					
*** 3 part-time attorneys are assigned -- 962 juvenile and other cases in 3rd quarter					
-- 943 juvenile and other cases in 2nd quarter					

Ms. Carpenter made the motion for reimbursement as shown. Ms. Jerrell seconded the motion, and the motion carried (Ms. McClure cast her "in favor of" vote by telephone to Mr. Murphy at 3:45 pm on 12-16-05).

14. The meeting adjourned at 4:50 p.m. with the next meeting scheduled for April 6, 2006.

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Norman Lefstein, Chairman

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Date